

(Rev. 5/05)

FORM TO BE USED BY A PRISONER IN FILING A COMPLAINT
UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. §1983

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

(1) KEVIN D. DIXON, 154239
(Name of Plaintiff) (Inmate Number)

D.C.C., 1181 PADDOCK RD, SMYRNA DE, 19977
(Complete Address with zip code)

(2) _____
(Name of Plaintiff) (Inmate Number)

(Complete Address with zip code)

(Each named party must be listed, and all names
must be printed or typed. Use additional sheets if needed)

vs.

(1) THOMAS L. CARROL, ET AL.

(2) _____

(3) _____
(Names of Defendants)

(Each named party must be listed, and all names
must be printed or typed. Use additional sheets if needed)

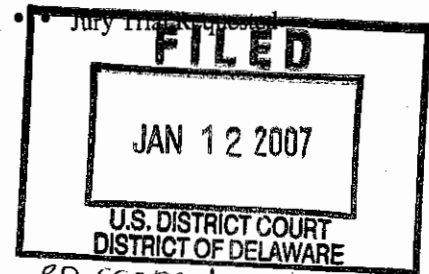
I. PREVIOUS LAWSUITS

- A. If you have filed any other lawsuits in federal court while a prisoner, please list the caption and case number including year, as well as the name of the judicial officer to whom it was assigned:

05 - 756 (SLR)

- 07 - 26 -
(Case Number)
(to be assigned by U.S. District Court)

CIVIL COMPLAINT



BD scanned
JFP

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

KEVIN D. DIXON

V.

THOMAS L. CARROL, STANLEY TAYLOR,
RONALD HOSTERMAN, LARRY SAVAGE,
RALPH HEVERIN, LT. REYNOLDS, LT. SPENCER,
LT. SARAH MAGGIE, J. JACKSON, CAPT JANET HENRY,

II. EXHAUSTION OF ADMINISTRATIVE REMEDIES

In order to proceed in federal court, you must fully exhaust any available administrative remedies as to each ground on which you request action.

- A. Is there a prisoner grievance procedure available at your present institution? ☒ Yes ☐ No
- B. Have you ☒ fully exhausted your available administrative remedies regarding each of your present claims? ☒ Yes ☐ No

C. If your answer to "B" is Yes:

1. What steps did you take? FILED GRIEVANCE IN ACCORDANCE TO GRIEVANCE PROCEDURE 4.4.
2. What was the result? DEFENDANTS RESPOND STATING DISCIPLINARY AND CLASSIFICATION PROCEDURE ARE NOT GRIEVABLE.

D. If your answer to "B" is No, explain why not: D/A

III. DEFENDANTS (in order listed on the caption)

(1) Name of first defendant: SEE ATTACHED

Employed as _____ at _____

Mailing address with zip code: _____

(2) Name of second defendant: SEE ATTACHED

Employed as _____ at _____

Mailing address with zip code: _____

(3) Name of third defendant: SEE ATTACHED

Employed as _____ at _____

Mailing address with zip code: _____

(List any additional defendants, their employment, and addresses with zip codes, on extra sheets if necessary)

IV. STATEMENT OF CLAIM

(State as briefly as possible the facts of your case. Describe how each defendant is involved, including dates and places. Do not give any legal arguments or cite any cases or statutes. Attach no more than three extra sheets of paper if necessary.)

1. SEE ATTACHED STATEMENT
OF CLAIMS # IV

2. SEE ATTACHED STATEMENT
OF CLAIMS # IV

3. SEE ATTACHED STATEMENT
OF CLAIMS # IV

V. RELIEF

(State briefly exactly what you want the Court to do for you. Make no legal arguments. Cite no cases or statutes.)

1. 10 MILLION DOLLARS FOR PUNITIVE,
NOMINAL AND EXEMPLATORY DAMAGES
THAT RESULTED FROM THE DEFENDANTS
VIOLATING THE PLAINTIFFS WELL ESTABLISHED
U.S CONSTITUTIONAL RIGHTS.

Preliminary Injunction

For the D.O.C treatment Administrator to file a modification of sentence with the Superior Court of Kent County, for the plaintiff to be transferred to the Delaware Psychiatric Center until he is eligible for parole.

For a mental health treatment program to be available for mentally ill inmates housed in the segregated housing buildings 17-18 & 19.

mental health counselor on duty 24 hours daily, for the D.O.C mental health patients.

For the D.O.C to inform the Delaware Superior Courts that an inmate is diagnosed with mental illnesses and is prescribed psychotropic drugs (for pre-trial inmates.)

2. COURT APPOINTED COUNSELOR TO LITIGATE THIS ACTION.
PLAINTIFF IS A SERIOUSLY MENTALLY ILL PERSON DIAGNOSED
WITH SCHIZOPHRENIA + MULTIPLE PERSONALITY DISORDER,
FOR WHICH STRONG PSYCHOTROPICS ARE PRESCRIBED.
PLAINTIFF READS AND WRITES ON A SECOND GRADE LEVEL
AND CANNOT LITIGATE THIS ACTION.
3. EXPUNGE ALL DISCIPLINARY REPORTS OUT OF
CLASSIFICATION FILE. FOR ATTORNEY AND
PSYCHIATRIST TO REPRESENT THE MENTALLY ILL
AT DISCIPLINARY + CLASSIFICATION HEARINGS, AND
PAROLE HEARINGS. (MENTALLY ILL PRESCRIBED PSYCHOTROPICS).

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 09 day of JAN., 2007

Kenn D. Dixon Sr.
(Signature of Plaintiff 1)

(Signature of Plaintiff 2)

(Signature of Plaintiff 3)

I Kevin D. Dixon, SBI # 154239,
 due hereby certify that I am the plaintiff
 in This civil action, that the claims
 as noted herein are true and correct,
 and that I am a mental health patient
 who has been diagnosed with the
 mental illnesses of schizophrenia and
 multiple personality disorder for which
 I am prescribed strong psychotropic drugs.
 I read and write at a ~~second~~ second
 grade level, I am illiterate to law and
 I will not be able to litigate This civil
 action without an attorney. I did not
 author this notation, ~~but~~ I did not author
 the civil action documents used as exhibits,
 but with the signing of my signature, I bare
 witness that the claims as stated herein
 are true and correct and that I give
 my consent for this action ~~and~~ notation to be
 authored, and for The United States district
 Court for the district of Delaware to have
 jurisdiction over this action.

01-09-07

Kevin D. Dixon Sr.

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IV

Statement of claims

" Brief Description of Argument "

In 1983 the plaintiff was sentenced in the Kent County Superior Court to serve a 45 year sentence at the D.O.C with the eligibility for parole.

The plaintiff is a seriously mentally ill person, diagnosed with schizophrenia and multiple personality disorder for which psychotropic drugs are prescribed, which the defendants are well aware of.

(See civil action 89-393(JL) attached)
herein as exhibit

The plaintiff has been subjected to numerous disciplinary hearings while he was incompetent, and the defendants have failed to either train for maintenance of wrongful customs, practices and policies, and the defendants have failed to take the plaintiff's serious mental illnesses into consideration before disciplinary hearings were conducted. The defendants have also failed to provide the plaintiff with any written documents regarding disciplinary hearing. The defendants violations of the plaintiff's well established rights have resulted in his being denied parole.

" In regards to the P.L.R.A, Prison litigation reform Act. "

According to the Delaware Department of Corrections (S.O.P), Standard Operational procedure 4.4, issues concerning disciplinary and classification procedures and decisions are excluded from the inmate grievance procedure.

therefore, in regard to the P.L.R.A, the plaintiff did exhaust his administrative remedies.

See; Brown v. Chock, 312 F.3d 109, - 113 (3RD CIR 2002), Mitchell v. Horn, - 318 F.3d 523, 529 (3RD CIR 2003), - Miller v. Norris, 247 F.3d 736, 740 (8TH CIR 2001.)

A remedy that prison officials prevent prisoners from utilizing is not an available remedy under P.L.R.A.

Under color of state law, at the Delaware Correctional Center, between the dates of 1983 thru Jan 2005, and 2005 of Feb thru Jan 2007, the defendants Thomas L. Carol warden of the Del. Corr. Center, Ronald Hosterman treatment administrator, Captain Janet Henay, Classification officer J. Jackson, D.D.O.C Commissioner Stanley Taylor, Hearing officers Berrie Williams - LT Larry Savage, LT - Ralph Henerin - LT Reynolds - LT Spencers - Lt Sarah Maggie along with any other unnamed hearing officer who conducted disciplinary hearings against the plaintiff Kevin D. Dixon SBI # 154239, ~~the~~ conducted disciplinary hearings against the plaintiff without first consulting with psychiatrist whom was treating his serious mental illnesses of schizophrenia and multiple personality disorder in order to determine his state of mind at the time of said disciplinary code violation and or at the time of the disciplinary hearing, even though the defendants were fully aware that said serious mental illnesses effected the plaintiff at all times during his incarceration, for which supports the plaintiffs claim of Deliberate indifference in regards to the plaintiffs medical condition and or needs

(See attached exhibit CA No. 89-393(JU)).

P. II)

the defendant Stanley Taylor and

the defendant Thomas L. Carroll failed to train the defendants for maintenance of wrongful customs, practices and policies.

The defendants failed to consult with my psychiatrist in order to determine if said disciplinary sanction would interfere with treatment prescribed by my psychiatrist while I was in the infirmary on Psych close observation level I and on level II, or while I was in general population. Said disciplinary sanctions indeed did interfere with the treatment prescribed to me, due to said sanctions exacerbating my mental health condition and causing me to remain in the infirmary for longer than I think I would have, for causing me to be confined in the disciplinary segregation building S.H.U., ~~where~~ where I wasn't able to receive the same mental health treatment that I was receiving while in general population and as that is provided to inmates housed in general population, for which violated my established liberty interest. See the correctional code of penal discipline (C.C.P.D.).

P. III)

The defendants failed to provide the plaintiff Kevin D. Dixon at every disciplinary hearing conducted against him with

- (A) a written notice of the disciplinary code violations,
- (B) the opportunity to allow an attorney and or counselor from mental health to represent him due to the plaintiff's mental health illnesses of schizophrenia and multiple personality disorder that rendered him incompetent, (C) the opportunity to call witnesses in his very own behalf,
- (D) the opportunity to present evidence in his own behalf, (E) to provide a written notice of the fact finding, (F) to be allowed to appeal,
- (G) to receive a written notice within 48 hours,
- (H) to have the disciplinary hearing(s) conducted within 72 hours after the alleged disciplinary code violation are said to have occurred,
- (I) within 7 days after the alleged disciplinary code violation are said to have occurred.

8TH And 14TH U.S.C.A right violations
 See, Estelle v. Gamble, 97 S.Ct 285, 50 -
 L. Ed 2d 251, see also Avant v. Clifford, -
 67 NJ 496, 341 A.2d 629., United States ex rel,
 Ross v. Warden 482 F.Supp 443, -
 Wolff v. McDonnell, 418 U.S 539, 556 (1974).

The plaintiff intends for the pleadings to be interpreted, as the defendants are ~~able~~ liable for said constitutional violations as stated herein, each and every time disciplinary hearings and sanctions were imposed upon him between the dates of 1983 the Jan 2005, and from 2005 of Feb thru 2007 of Jan. The plaintiff thinks he was subjected to more than 90 different disciplinary hearings and sanctions, for which resulted in the plaintiff being transferred to disciplinary segregation on at least 8 different occasions: 6 months, 14 months, 12 months, 8 months, 24 month, 9 months, 14 months and again for 8 months.

During the plaintiff's confinement in the disciplinary segregation unit, during stated durations of time noted herein, the plaintiff was denied visits, religious services, commissary, haircuts, phone calls, psychiatric treatment, recreation like other inmates housed in general population. During the plaintiff's stay in disciplinary segregation, the lack of psychiatric treatment would call for the plaintiff to be transferred to the D.C.C infirmary on numerous occasions and or to The Delaware Psychiatric Center on numerous occasions (see the plaintiff Superior Court criminal docket sheet attached ~~as exhibit~~).

P. IV)

Ronald M. Hosterman informed me via written notation that I was scheduled to go before the parole board on April 19, 2005 at the Delaware Correctional Center, and that I should make certain that I was prepared, so I gathered up all the certificates I've earned and went to the parole hearing when I was called at or about 8:30 A.M. on April 19, 2005.

Subsequently, the parole board explained to me that I was being denied parole due in part to institutional assaultive behavior, that I had absolutely no knowledge of, for which was explained to me by the parole board was based on disciplinary reports gathered in my classification file. Said assaultive behavior is denied by the plaintiff, due to his not being able to recall said assaultive behavior. This gives reason to why the plaintiff seeks to have the unconstitutional disciplinary hearing procedures reviewed.

The second reason the parole board gave for denying me parole was that I was not recommended for parole by the D.C.C. correctional institution. On numerous occasions prior to April 19, 2005 I requested for treatment administrator Ronald M. Hosterman to author a parole recommendation for me utilizing the certificates I've earned, i.e. -

P. V)

Anger management group 10/22/99 to 2/4/00, Workshops for training in nonviolence alternatives to violence project 9/15/96, Friends in need - 8/1/00, Workshops for training in non violence alternatives to violence project 11/22-24/96, New Start program 10/17/96, Workshops for training in non violence alternatives to violence project 3/7-9/97, Depression awareness 7/6/04, Positive lifestyle 2/3/04, Depression groups 4/27/04, Skill building in mental health 12/30/03, Mental Health coping with anxiety 8/06/04, General mental health group 2/14/97, HIV/AIDS - Education program 12/7/04, Understanding substance abuse group 11/2/98 to 1/25/99, Positive image 5/25/00, Principles of recovery May 25, 00, D.U.I driving under the influence 7/31/00, Frustration and Ventilation 7/31/00, (see attached herein as exhibits), for which addresses not one but two of the reasons given to me for being denied parole; Insufficient participation in appropriate treatment and not recommended by institution.

The Two remain reasons provided for denying me parole are violent nature of offense and Victim impact. The nature of offense gives reason to why i've served 25 years of my 45 years sentence.

P. VI)

I intend to state to the parole board during my next parole hearing, that I should be eligible for parole due to my willingness to address the issues pointed out to me that are said to have lead to the nature of the criminal offense responsible for my incarceration.

Regarding to victim impact, I have had (3) parole hearings, and each time before the parole hearing, the victim's family and or friends and associates were contacted, and not once ~~has~~ has anyone who was contacted responded with objection to my being paroled.

I know that parole is a privilege, I just want to be given the full and fair opportunity to present my self to the parole board in the manner that im entitled to; in accordance to the Superior Court of Kent County sentencing order.

The defendants have been notified by the plaintiff via written notations, grievances, as well as verbally, but have failed to respond, act or correct said conditions as stated herein, for which defines deliberate indifference, recklessness and wanton infliction of pain and suffering; 2/05 thru 4/06.

8TH and 14TH U.S.C.A rights violations.
See, Estelle V. Gamble, 97 S.Ct 285, 50, L.Ed 2d 251.
See also, United States exel, Ross V. Warden, -
482 F.Supp 443.

At the D.C.C., the plaintiff wrote notations to Warden Thomas L. Carroll between Feb 2005 thru April 2006, seeking to be provided with full and complete photo copies of his disciplinary reports, his medical records and his housing records, in order to be able to present the factual time, dates and persons that violated his constitutional rights as stated herein, for the purpose of appeal, as well as for the purpose of filing civil complaint, but the plaintiff's numerous attempts to obtain the documents that are in the possession of the defendants, his attempts were rendered futile due to the defendants simply ignoring the notations.

The defendants were at all times during the plaintiff's incarceration well aware of his serious mental illnesses of schizophrenia and multiple personality disorder, for which renders the plaintiff incompetent, along with the fact that he complained of not receiving proper mental health treatment as stated herein. Said claims are supported by civil actions that were filed in the United States District Court, CA No 89-393 (JCC) - and CA No. 05-756 (SLR), see attached herein as exhibits.

P. VIII

According to the Delaware Department of Corrections, (S.O.P), Standard Operational Procedure 4.4, issues concerning disciplinary and classification procedures and decisions are excluded from the inmate grievance procedure. Therefore, in regards to The P.L.R.A, the plaintiff did exhaust his administrative remedies.

See, Brown V. Chock, 312 F.3d 109, 113 (3RD CIR 2002), Mitchell V. Horn, 318 F.3d 523, 529 (3RD CIR 2003), Miller V. Norris, 247 F.3d 736, 740 (8TH CIR 2001), a remedy that prison officials prevent a prisoner from utilizing is not an available remedy under P.L.R.A.

Note: Regarding the plaintiff Kevin D. Dixon SBI# 154239 incompetence, the plaintiff did not author CA No. 89-393 (JLL) nor did the plaintiff author CA. No 05-756 SLR.

Furthermore, the plaintiff is a seriously mentally ill person who is diagnosed with schizophrenia and multiple personality disorder for which psychotropic drugs are prescribed.

The plaintiff reads and writes on a third grade level, the plaintiff is not learned in law, and the plaintiff will not be able to litigate this action due to reasons stated herein

that define him as an incompetent person. The plaintiff hereby request for the appointment of Counsel.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

KEVIN DIXON,)	
)	
Plaintiff,)	
)	
v.)	Civ. No. 05-756-SLR
)	
COMMISSIONER STANLEY TAYLOR,)	
et al.,)	
)	
Defendants.)	

MEMORANDUM ORDER

Plaintiff Kevin Dixon brings this civil rights action pursuant to 42 U.S.C. § 1983. He appears pro se and on November 14, 2005, was granted in forma pauperis status pursuant to 28 U.S.C. § 1915. (D.I. 3) The court now proceeds to review and screen the complaint pursuant to 42 U.S.C. § 1915 and § 1915A.

For the reasons discussed below, the complaint is dismissed as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1).

I. THE COMPLAINT

Plaintiff names as defendants Commissioner Stanley Taylor ("Commissioner Taylor"), Warden Thomas Carroll ("Warden Carroll"), Captain Janet Henry ("Henry"), and J. Jackson ("Jackson"). He alleges that during the early part of June 2005 he was "supposed to have been involved" in some type of altercation with another inmate and was subsequently transferred to Building 21 as ordered by Henry. (D.I. 2, para. 1) Plaintiff alleges he has not been cited for a rule infraction, yet he has

been locked in his room and only allowed three hours of exercise per week¹. Plaintiff alleges that he has a history of mental illness and the unit is not individualized to his problems. He alleges that he wrote to the disciplinary officer and requested a hearing and representation, but received no response. He further alleges that he wrote to each defendant, and they each "ignored answering". (D.I. 2)

The complaint states that Jackson advised plaintiff his placement in the unit was a result of the June 2005 altercation. Plaintiff alleges he received nothing in writing conveying any type of altercation, nor was he provided with a hearing.

Plaintiff alleges that while housed in the unit, he only receives psychiatric medication. He also alleges there are no available programs. In addition, plaintiff alleges he was unable to secure law library assistance, stating that the library would only provide him cases if he knew the case name. Plaintiff alleges that the Multi-Disciplinary Team recommended that he be removed from the building, but the defendants ignored the recommendation. According to plaintiff, there is no valid or documented reason for the alleged treatment.

Plaintiff alleges he is treated in a punitive manner in violation of his right to equal protection, due process, and the

¹The complaint states, "I have been locked in room 195 hours per week". (D.I. 2, para. 1) The sentence has two meanings. Plaintiff was locked in Room 195 for many hours per week. Or, plaintiff was locked in his room for 195 hours per week. Notice is taken that a week contains only 168 hours.

prohibition against cruel and unusual punishment. He seeks immediate removal from Building 21, appointment of counsel, injunctive relief, and compensatory and punitive damages.

II. STANDARD OF REVIEW

When a litigant proceeds in forma pauperis, 28 U.S.C. § 1915 provides for dismissal under certain circumstances. When a prisoner seeks redress in a civil action, 28 U.S.C. § 1915A provides for screening of the complaint by the court. Both 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1) provide that the court may dismiss a complaint, at any time, if the action is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant immune from such relief. An action is frivolous if it "lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989).

The court must "accept as true factual allegations in the complaint and all reasonable inferences that can be drawn therefrom." Nami v. Fauver, 82 F.3d 63, 65 (3d Cir. 1996) (citing Holder v. City of Allentown, 987 F.2d 188, 194 (3d Cir. 1993)). Additionally, pro se complaints are held to "less stringent standards than formal pleadings drafted by lawyers" and can only be dismissed for failure to state a claim when "it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Haines

v. Kerner, 404 U.S. 519, 520-521 (1972) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)).

III. ANALYSIS

A. Due Process

The gist of plaintiff's complaint is that he was subjected to disciplinary confinement without due process of law. More particularly, he contends that he was moved to Building 21 in June 2005 without receiving written charges or a hearing.

In Wolff v. McDonnell, 418 U.S. 539, 556 (1974), the Supreme Court held that prisoners must be accorded due process before prison authorities may deprive them of state created liberty interests. A prison disciplinary hearing satisfies the Due Process Clause if the inmate is provided with: (1) written notice of the charges and not less than 24 hours to marshal the facts and prepare a defense for an appearance at the disciplinary hearing; (2) a written statement by the fact finder as to the evidence relied on and the reasons for the disciplinary action; and (3) an opportunity "to call witnesses and present documentary evidence in his defense when to do so will not be unduly hazardous to institutional safety or correctional goals." Wolff, 418 U.S. at 563-71; Griffin v. Spratt, 969 F.2d 16, 19-20 (3d Cir. 1992). It is axiomatic, however, that to be entitled to procedural due process protections as set forth in Wolff, a prisoner must be deprived of a liberty interest. See Wolff, 418

U.S. at 557-558.

The Due Process Clause itself confers no liberty interest in freedom from state action taken "within the sentence imposed." Sandin v. Conner, 515 U.S. 472, 480 (1995) (quoting Hewitt v. Helms, 459 U.S. 460, 468 (1983)). More so, state created liberty interests protected by the Due Process Clause are generally limited to restraints on prisoners that impose an "atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." Griffin v. Vaughn, 112 F.3d 703, 706 (3d Cir. 1997) (quoting Sandin, 515 U.S. at 484).

The Third Circuit has held that a state prisoner's confinement in administrative segregation for 15 months did not impose an atypical and significant hardship on the prisoner. Griffin, 112 F.3d at 706-09; see Sack v. Canino, No. Civ. A. 95-1412, 1995 WL 498709, *1 (E.D.Pa. Aug. 21, 1995) (assuming that the plaintiff was not afforded the protections called for by Wolff, because the sanction of 30 days disciplinary confinement did not implicate a liberty interest, such infraction did not violate the plaintiff's due process rights). As of this date, plaintiff has been housed in Building 21 for less than seven months - an amount of time that does not implicate a protected liberty interest. That is not to say that plaintiff may have a cause of action if he is left in building 21 for an indeterminate amount of time. Regardless, based upon the relatively short time

he has been confined in Building 21, plaintiff lacks the requisite liberty interest to implicate a due process violation.

As plaintiff has not articulated a protected liberty interest with respect to his discipline, confinement, and loss of privileges, his due process claims are dismissed for failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) and § 1915A(b)(1).

B. Appointment of Counsel

Plaintiff seeks appointment of counsel. (D.I. 5) A pro se litigant proceeding in forma pauperis has no constitutional or statutory right to appointed counsel. See Ray Robinson, 640 F.2d 474, 477 (3d Cir. 1981). It is within this court's discretion, however, to seek representation by counsel for plaintiff. This is done only "upon a showing of special circumstances indicating the likelihood of substantial prejudice to [plaintiff] resulting from [plaintiff's] probable inability without such assistance to present the facts and legal issues to the court in a complex but arguably meritorious case." Smith-Bey v. Petsock, 741 F.2d 22, 26 (3d Cir. 1984); accord Tabron v. Grace, 6 F.3d 147, 155 (3d Cir. 1993) (representation by counsel may be appropriate under certain circumstances, after a finding that a plaintiff's claim has arguable merit in fact and law).

Plaintiff has made no showing of a meritorious claim. As discussed above, his complaint is frivolous. The motion is

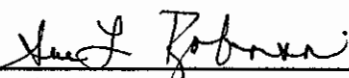
therefore denied.

IV. CONCLUSION

At Wilmington this 10th day of January, 2006 for the reasons set forth above;

IT IS ORDERED that:

1. Plaintiff Kevin Dixon's complaint is DISMISSED without prejudice as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1).
2. The motion for appointment of counsel (D.I. 5) is DENIED.


UNITED STATES DISTRICT JUDGE



PUBLIC DEFENDER OF THE STATE OF DELAWARE
ELBERT N. CARVEL STATE OFFICE BUILDING
820 NORTH FRENCH STREET, THIRD FLOOR
P.O. BOX 8911
WILMINGTON, DELAWARE 19801

LAWRENCE M. SULLIVAN
PUBLIC DEFENDER

T. ANDREW ROSEN
ASSISTANT PUBLIC DEFENDER

ANGELO FALASCA
CHIEF DEPUTY

TELEPHONE
(302) 577-5128

June 28, 2005

Kevin Dixon
SBI# 00154239
Delaware Correctional Center
N-440
1181 Paddock Road
Smyrna, DE 19977

Mr. Dixon,

Your options are 3, serve your life in prison, get released by the Parole board, or get released by the Pardon board and Governor (which requires a hearing before the Parole board).

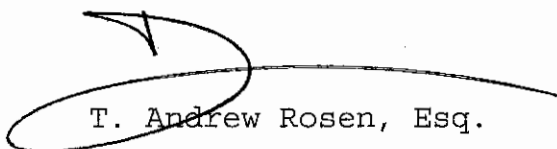
The only way you are going to the State Hospital as opposed to imprisonment is if the medical staff at the prison determines they cannot adequately take care of your problems. I assure you that anything you try and do to force the issue will make things worse for you, so I wouldn't recommend it. Stick to putting in sick-call slips until whatever problem you have is being properly medicated.

I can't comment on your suggestion of bias in regard to the Chairman of the Parole board. I can however indicate that "insufficient participation in appropriate treatment", "not recommended by institution", and "institutional assaultive behavior" have nothing to do with any bias from the Board, and would earn you a denial no matter who is on the Board.

Get to work with your counselor addressing those concerns as well as the specific suggestions in the denial letter. Once you have successfully addressed the prison's concerns, the Parole

board will fall in line. Until you are doing what the prison wants, there is nothing I can do to help you.

Yours,



T. Andrew Rosen, Esq.

CRIMINAL ACTION 1982

JK-82-12-0048
State of Delaware
vs
Kevin D. Dixon

Title 11 Section 636 a
Murder 1st Degree

7.00	1982, December 9- Rec'd + filed in Superior Court.	ccu
00	1982, December 5- Arrest date	SPC
.00	1982, December 9- Probable cause established	CCP
2.00	1982, December 5- Warrant issued through SPC, Case No. JP7 82-12-0368, Held without bail from CCP.	AS
0	Committed	SPC
.05	2. 1982, Dec. 15 - Transcript of Preliminary Hearing	arr
2.10	Merrill C. Traylor, Judge	
1.00	1982, Dec. 30 - ^{notice of} motion to set bail.	Notice
1.00	1983, Jan. 11 - Subp. reg. Subp. iss.	Notu
Em 1.00	1983, Jan. 20 - Order Signed. (w/attached letter).	ma
ten 1.00	George R. Wright, Judge	mol
1.00	3. 1983, Feb. 8 - True Bill.	Sup
3.00	George R. Wright, Judge	has
1.00	1983, Feb 18 - defendant arraigned in open court, waived	mem
1.00	reading of indictment, entered a plea of not guilty,	Sup
5.00	jury trial requested.	
1.00	1983 Jan 21 - Motion to Set Bail was presented in open	
un 1.00	court. Motion signed. Bail set at \$100,000.00 secured	
5.00	bond. George R. Wright, Judge	
2.00	1983 Feb 10 - Order	
5.00	1983, April 26 - Notice of Motion, Motion to	
1.00	suppress statements	
2.00	1983 April 26 - Notice of insanity defense, ^{Asst. P.D.}	
71.45	1983, May 9 - letter from Nancy Jane Mullen, ref: the	
2.00	suppression hearing on Kevin Dixon.	
	1983, May 17 - motion for psychiatric and psychological	
	evaluation.	
	1983, June 2 - Office conf. held. Motion to dismiss	
	weapons charge presented. State to file Reply	
	Brief. all discovery to be filed by 6-17-83. Suppres	
	hearing set. Motion for psy. exam granted.	
	Wm. D. Bush, II, Judge.	
	1983, June 15 - Subpo reg Subps issued	
	1983, July 14 - Subp. reg. Subp. iss D	
	1983, July 15 - Subp. reg. Subp. iss D	
	1983, July 11, '2, 21 - Suppression hearing held before	
	The Honorable W.D. Bush. Brief schedule set. reg	
	8-1-83. State 8-12-83. Trial argument to be scheduled.	
	1983, Aug 4 - Transcript of hearing. W.D. Bush, III, Judge	

Cont. on Page
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CRIMINAL ACTION

on Page 264 State vs. Kevin Dixon IK 82-12-0048

1983, Aug. 5 - Memorandum in support of motion to suppress.
1983, Aug. 12 - States response to defendants arguments to suppress.

1983, Aug. 17 - Suppression hearing held before the Honorable Wm. H. Bush, III, and the ruling is that the statements were made by a coherent Kevin Dixon, & of his own free will. The will be allowed to be used by the State.

1983, Aug 25 - Order: And now, to wit, this 22nd of Aug 1983, upon application of Nancy Jane Mullen, Asst P.D., counsel for defendant, that he be brought to Superior Court Cellblock, New Castle County on Aug 25 to be examined by Dr. Irvin Weintraub and then be returned to D.C. s/Judge

1983, Aug 29 - Change of Plea from Not Guilty to Guilty of Murder Second degree, a lesser included offense under the same Indictment. P.S.I. W.H. Bush, III, Judge.

1983, Oct. 7 - Sentence - IK 82-12-0048 - to be imprisoned for life B. Dec. 4, 1982. P.C. (suspended). IK 82-12-0049 - Nolle Prosequi entered.

Wm. H. Bush, III, Judge.

1984, Jan 3 - Order - It is hereby ordered, pursuant to the provisions of 11 Del. C. Sec. 406, that Kevin Dixon be transferred on Friday, June 29, 1984, or as soon thereafter as possible, under whatever security arrangements the Department of Correction deems appropriate, from the Multi-Purpose Criminal Justice Facility to the Delaware State Hospital for further evaluation and treatment of his mental illness, for as long as determined to be medically necessary by the medical staffs of the Department of Correction and the Delaware State Hospital, subject to review by this Court if required or requested, and that the said Kevin Dixon be thereafter returned to the Multi-Purpose Criminal Justice Facility or any other correctional facility designated by the Department of Correction for his confinement.

Robert C. O'Hara, Judge
(for Judge Bush)

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CRIMINAL ACTION

could from 504

1986, Feb. 12 - Order. Whereas the Dept. of Correction (formerly part of the Dept. of Health & Social Services) has informed the Court thru Deputy Attorney General Don C. Brown, its counsel, that Kevin Dizon, a prisoner confined in the Maximum Security Unit of the Delaware Correctional Center serving a life sentence in the above-captioned case, is mentally ill; and whereas it is the opinion of Dr. David E. Rarden, a psychiatrist, and Kevin Treu, a psychologist, both of whom are contractual employees of the Dept. of Correction w. the mental-health expertise contemplated of an examining physician under 11 Del. C. § 406 & both of whom are considered by this Court to have been appt'd under that statute to determine the prisoner's mental condition, that Kevin Dizon is presently mentally ill; It is hereby ordered, pursuant to the provisions of 11 Del. C. § 406, that Kevin Dizon be transferred on Tuesday, Feb. 11, 1986, or as soon thereafter as possible, under whatever security arrangements the Dept. of Correction deems appropriate, from the Maximum Security Unit of the D. of C. to the Delaware State Hospital for further evaluation & treatment of his mental illness, for as long as determined to be medically necessary by the medical staffs of the D. of C. & the D. S. H., & that the said Kevin Dizon be thereafter returned to the D. C. C. or any other correctional facility designated by the D. of C. for his confinement.

Bernard Balick, JUDGE
1987 Nov. 18 - Application for reduction of sentence is denied. Judge William H. Bush, III.

1995 June 13 - Ordered that, pursuant to the provisions of 11 Del. C. Sec. 4322(A), the Department of Correction and/or Board of Parole shall permit Mr. Peills to inspect a copy of the aforementioned reports within no more than one week of the receipt of this order. D. Mason Terry Jr.
Oct 26/95 mm

1999, February 1. - Motion for Psychological and Psychiatric evaluation filed by

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CRIMINAL ACTION

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1999, February 2, - It is hereby ordered and directed that defendant Kevin Dixon be transferred to the Delaware State Hospital where he is to be Psychologically and Psychiatrically evaluated and treated, and that the report be circulated to Defense Counsel, the court and to the Office of the Attorney General, and such report shall be used in evaluating defendant's fitness for release before the Parole Board.
Judge Henry duPont Ridgely

O&O

1999, August 18 - Psychiatric/psychological evaluation LMT report filed -

1999, September 15 - It is ordered that the annexed envelope containing said report shall be sealed and included with the record by the Prothonotary, subject to further order of this Court or the Supreme Court of Delaware in the event of an appeal.

Judge Henry duPont Ridgely

1999, September 13 - Letter to Judge Ridgely from Dianne Stachowski, DHS. RE: requesting a court order for the discharge of inmate Kevin Dixon from the Mitchell Building at Delaware Psychiatric Center to the Department of Correction. So ordered on 9/14/99

Honorable Henry duPont Ridgely

2000, February - Motion for Reduction of Sentence
Return Call, Esquire

2000, August 17 - Motion for Reduction of Sentence denied
President Judge Henry duPont Ridgely

2001, December 21 - Psychiatric/psychological evaluation report filed

2001 Dec 26 - Order transporting the defendant to the Delaware State Hospital for evaluation & treatment
m. E. [unclear]
2002 Feb 13 - Order sealing report from Dr. Sylvia Foster -
Dr. Anita McDonald.

TEST:

PROTHONOTARY

Paula Quate [unclear]
Parole II.

Copy of certified docket requested & sent. JP



STATE OF DELAWARE
DEPARTMENT OF CORRECTION
OFFICE OF THE SECURITY SUPERINTENDENT
MAXIMUM & MEDIUM-HIGH SECURITY
DELAWARE CORRECTIONAL CENTER
1181 PADDOCK ROAD
SMYRNA, DELAWARE 19977
TELEPHONE: (302) 653-9261
FAX: (302) 659-6663

MEMORANDUM

TO: I/M Kevin Dixon #154239
MHU 21 CU8

FROM: Major David K. Holman *DKH*

DATE: September 21, 2005

RE: Your Letter of September 20, 2005

I have checked into your complaint and there has been no finding of guilty by the Hearing Officer regarding the incident you described.

Ms. Forbes and I have discussed this issue and your classification will be reviewed without this incident being considered.

DKH/cf

xc: Counselor Forbes
S/Lt. Bernard Williams
File



STATE OF DELAWARE
DEPARTMENT OF CORRECTION
TREATMENT OFFICE
DELAWARE CORRECTIONAL CENTER
1181 Paddock Road
SMYRNA, DELAWARE 19977
Telephone: (302) 653-9261
Fax: (302) 659-6688

TO: **Kevin D. Dixon**
D/E Building

FROM: Ronald G. Hosterman
Treatment Administrator *RGH*

DATE: **April 13, 2005**

RE: **Parole Board Hearing**

You are scheduled for a hearing before the **Board of Parole** at the Delaware Correctional Center on **April 19, 2005** at approximately **8:30 a.m.**

Please make certain that you are prepared when the officer calls for you.

RGH/mmr

Cc: File



STATE OF DELAWARE
BOARD OF PAROLE

CARVEL STATE OFFICE BUILDING - FIFTH FLOOR
820 N. FRENCH STREET
WILMINGTON, DELAWARE 19801

DWIGHT F. HOLDEN
CHAIRPERSON

TELEPHONE: (302) 577-5233
FAX: (302) 577-3501

April 21, 2005

Mr. Kevin D. Dixon
SBI# 00154239
Delaware Correctional Institution
Smyrna Landing Road
Smyrna, DE 19977

Dear Mr. Dixon:

At the meeting of the Parole Board on April 19, 2005, your release to parole supervision was denied by a vote of 4 to 0.

The Board's decision was based upon the following factors:

- Violent Nature of Offense
- Inst. Assaultive Behavior
- Victim Impact
- Insufficient Participation In Appropriate Treatment
- Not Recommended by Institution

Based on the above-noted factors, the Board of Parole believes that you continue to pose a risk to the community. It is ordered that no further consideration be given to your case. **The Board of Parole recommends that you work with your counselor to develop a plan for continued substance abuse treatment, mental health counseling and violent offender treatment. In addition, the Board strongly suggests completing the GED Program.**

It is the Board's order that you are now eligible to be reheard for parole consideration at any time after the expiration of forty-eight (48) months (4/2009). You may file a new application for parole consideration in accordance with the parole authority and procedure as stipulated in 11 Del. C. §4347, revised July 1, 1992.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dwight F. Holden".

Dwight F. Holden
Chairperson

DFH:dt

cc: Warden Thomas Carroll, DCC
Rebecca McBride, Records
File #9068

100 *Kevin D. Dyer Jr.*
S#111 154239 UNIT *SMU-23-D-U-1*
DELAWARE CORRECTIONAL CENTER
1181 PADDOCK ROAD
SMYRNA, DELAWARE 19077



Legal mail

CLERK OF THE COURT
U-S U.S. District Court
844 N. King Street
Wilmington, De.
19801

U.S. MAIL

Legal mail

THIS LETTER WAS SENT BY AN INMATE
WHO IS IN STATE PRISON. THE STATE
IS NOT RESPONSIBLE FOR DEBTS INCURRED
OR FOR THE CONTENTS OF THE LETTER.

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

07-26

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff NEW CASTLE CO
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant NEW CASTLE CO
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PARTIES (For Diversity Cases Only)

- Citizen of This State ☐ PTF ☐ 1
Citizen of Another State ☐ 2
Citizen or Subject of a Foreign Country ☐ 3
- for Plaintiff (Indicate in One Box) ☐ 4
for Defendant (Indicate in One Box) ☐ 5
for Plaintiff (Indicate in One Box) ☐ 6
for Defendant (Indicate in One Box) ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input checked="" type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN

- (Place an "X" in One Box Only)
- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

\$ 10,000,000

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

1/09/07

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____